

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JONATHAN MONSARRAT,

Plaintiff,

v.

BRIAN ZAIGER

Defendant.

CIVIL ACTION NO. 17-cv-10356-PBS

**PLAINTIFF’S RULE 54(b) MOTION FOR RECONSIDERATION OF DISMISSAL OF
DIRECT INFRINGEMENT CLAIMS.**

The plaintiff Jonathan Monsarrat moves for reconsideration of the Court’s December 21, 2017 interlocutory order dismissing as time barred his two standalone “inherently unknowable” direct infringement claims against the defendant Brian Zaiger. On the Rule 12(b)(6) record the Court might determine that had Monsarrat filed a John Doe lawsuit in 2013 and had a Court then issued a subpoena to Cloudflare, Encyclopedia Dramatica website’s ISP, Monsarrat would have then learned that Zaiger was the owner and operator of the website. But there is no basis on this Rule 12(b)(6) record enabling the Court to invade the province of the jury to determine when Monsarrat reasonably should have discovered that it was Zaiger who without authorization had copied Monsarrat’s copyrighted MIT mascot photograph and then in October 2011 and separately in 2012 posted or published the unauthorized reproduction on the Encyclopedia Dramatica website.

For the reasons set forth in his Memorandum filed in support of this motion plaintiff Jonathan Monsarrat requests the Court to vacate the portion of its December 21, 2017 decision

dismissing his amended complaint's claims of direct copyright infringement against the defendant Brian Zaiger.

DATED: January 31, 2018

Respectfully submitted,

JONATHAN MONSARRAT,
Plaintiff,

By his attorney,

ss/ Richard A. Goren

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1

I hereby certify that on January 18, 2018 and again on January 24, 2018, I conferred by email with the defendant's counsel and attempted in good faith to resolve or narrow the issues.

/s/ Richard A. Goren

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), on January 31, 2018.

/s/ Richard A. Goren